IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

Bail Appl..No. 6581 of 2007()

CRIME NO.497/07 OF KONNI POLICE STATION

: PETITIONERS/ACCUSED

---

1. PUSHPALATHA, W/O.MOHANDAS, JAITHRAM, IRAVOM KONNY, PATHANAMTHITTA.

2. MOHANDAS, JAITHRAM, IRAVOM KONNY, PATHANAMTHITTA.

BY ADV. SRI.C.S.MANILAL

RESPONDENTS:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6581 of 2007

Dated this the 31st day of October, 2007

ORDER

Application for anticipatory bail. Petitioners are the wife and husband. They are arrayed as accused 3 and 1 respectively in a crime registered under Section 353 I.P.C and the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

2. The crime was registered on 16.10.07. According to the police, a vehicle carrying sand was taken into the residential premises of the petitioners and the petitioners' compound was locked. Dogs were set free. The officials could not on that night take the necessary steps. Report was made to the police station. Thereafter, an attempt was made to inspect the premises of the petitioners. The 2nd petitioner, ie. the 1st accused and the driver were not available. The 1st petitioner/the 3rd accused allegedly showered abuses on the police officials and did not allow them to enter the property. She thus allegedly obstructed the officials from the discharge of their official duties. So far as the 2nd petitioner is concerned, the allegation is that he was engaging in objectionable activities contrary to the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 200. The learned Public Prosecutor submits that the 2nd petitioner is involved in earlier instances of crime relating to the

Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. Earlier crimes have been registered against the 2nd petitioner.

3. The learned counsel for the petitioners prays and the learned Public Prosecutor does not oppose the said prayer and I am satisfied that the 1st petitioner/wife can, in the circumstances of this case, be granted anticipatory bail. But so far as the 2nd petitioner/1st accused husband is concerned, I find merit in the opposition by the learned Public Prosecutor. I agree with the learned Public Prosecutor that this is a fit case where the 2nd petitioner must appear before the Investigating Officer or the learned Magistrate and seek regular bail in the ordinary course.

4. In the result:

a) This bail application is allowed in part;

b) The prayer of the 2nd petitioner/1st accused for anticipatory bail is rejected. The 2nd petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. Needless to say, if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

c) The following directions are issued under Section 438 Cr.P.C in favour of the 1st petitioner/3rd accused.

i) The 1st petitioner/3rd accused wife shall appear before the learned Magistrate at 11 a.m on 07.11.2007. She shall be enlarged on regular bail on her executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioner shall make herself available for interrogation before the Investigating Officer between 10 a.m and 3 p.m on 08.11.2007 and thereafter as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with her in accordance with law as if those directions were not issued at all;

iv) If the petitioner were arrested prior to her surrender on 07.11.07 as directed in clause (1) above, she shall be released from custody on her executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on 07.11.07.

(R.BASANT, JUDGE)

rtr/-